

COMMISSIONERS APPROVAL

CHILCOTT *g*

LUND *BL*

THOMPSON *AT*

TAYLOR (Clerk & Recorder)

Date.....March 1, 2006

Members Present.....Commissioner Greg Chilcott,  
Commissioner Betty Lund and Commissioner Alan Thompson

Minutes: Glenda Wiles

The Board met to review potential applicants for the Planning Board. No Victor School District applications were received.

Commissioner Chilcott called the Public Auction to order, reading the legal notice of the two parcels for public auction and noting the dates of sale. Also present at this meeting was Civil Counsel James McCubbin.

Glenda presented a letter from Phillip Taylor in regards to his opinion that the sale of these parklands goes against Montana Law without the public process to modify the original subdivision application of Bonanza Lands Subdivision application, as it relates to density of development and the required open space or parkland set-aside provisions.

James made a review of MCA 76-3-621. He stated under Title 7, the money for park lands is either through subdivision or at a later sale. The money at this time will go to the Park Fund as it would have at the time of initial subdivision. Monies must be used for land acquisition or maintenance. James stated there have been numerous meetings and discussions on this issue and he does not see any issues in proceeding with the public auction.

Commissioner Thompson stated he sits as a member of the Park Board, and it is the Park Board's decision to sell this property. Numerous properties were given to the county during the subdivision process of the past, and many of the parcels accepted by past Commissioners were swamps or steep cliffs. The Park Board met to discuss and make site visits to all of these parklands and the decision was made to sell certain properties in order to utilize the money for other parklands. This has been a long process, at least five to six years.

Commissioner Chilcott opened the bidding on Sawtooth Ranch. David Marquette offered \$37,800 by certified check (exactly 90%). There were no other bidders. Commissioner Thompson made a motion to accept the bid by David Marquette for \$37,800.00, for his client, C. Joseph Groven. Commissioner Lund seconded the motion and all voted "aye".

Commissioner Chilcott opened the bidding on North Park Lot Bonanza Lands #2. Dave Servoss offered \$96,275.00 in cash. Jeff Reynolds offered a letter of Credit of \$97,000.00.

James suggested whatever terms are acceptable to the Commissioners are fine, with a minimum of 20% down in cash.

April Hawkes bid \$98,000, with 20% cash down and the remainder within one day.

Jeff Reynolds bid \$99,000.

April bid \$99,500.

Jeff bid \$100,000.

Jeff asked if there would be any legal problems due to Mr. Taylor's letter. James he did not feel there is an issue, but anyone can sue for whatever they want. This property is subject to any easements or encumbrances.

Commissioner Lund made a motion to award the sale of the Bonanza Lands No. 2 to Jeff Reynolds in the amount of \$100,000.00 for 10.4 acres, subject to all easements and record of encroachment on the ground, showing a letter of credit and cash by 1:00 p.m. Commissioner Thompson seconded the motion and all voted "aye".

James indicated a deed would need to be drawn up for both parties. James will prepare Quit Claim Deeds and they will be available by 1:00 p.m. today.

In other business the Board addressed various administrative matters as follows:

Commissioner Lund made a motion to execute letters of understanding to pay employees premium pay on the actual day that the holiday occurs, rather than the day the State observes the holiday. (For detention, dispatchers and deputies). Commissioner Thompson seconded. All voted "aye".

Commissioner Thompson made a motion to sign the revised document for the County's Flex plan, which integrates the amendments from last year. Commissioner Lund seconded the motion and all voted "aye".

Employee Action forms were presented and signed.

Administrative Director Skip Rosenthal presented the Florence CTEP Change Order that included the engineers' errors. The error occurred because the Engineer only included the overruns and materials of \$8,553.33. The County has been reimbursed for these changes; no money has come from the County's pockets for engineering errors. This last change order will complete this project. The substantial completion will be the next document. Commissioner Lund made a motion to execute the change order. Commissioner Thompson seconded the motion and all voted "aye".

In regard to the Darby CTEP, Skip received a letter from the State to move forward on the CTEP process. He will begin that endeavor.

Skip received a letter from Planning Director Patrick O'Herren submitting his letter of resignation. Commissioner Lund made a motion to accept the letter of resignation. Commissioner Thompson seconded the motion and all voted "aye".

In other business, the Board met with Civil Counsel James McCubbin, County Attorney George Corn, Road Supervisor David Ohnstad and numerous citizens regarding an update on litigation, which included the discussion and possible decision of the court opinion and order on Bear Creek Trail Road. George indicated the decision has come down from the court and his understanding is that the decision has some general principles and only applies to one particular one. Judge Langton's decision is based on individual facts specific to the status of the road. He reviewed this road historically in a public right-of-way manner, and not as a County road. This is similar to Meridian Road as well, and it does not mean the county cannot perform maintenance. This court decision allows the Board of County Commissioners to make the decision to continue the maintenance, even though it is only a right-of-way. Some people say the Board of County Commissioners does not have the authority, but in his legal opinion, the county does have that right to maintain the road. Commissioner Chilcott asked if the liability exposure for the county is increased when the road is not built to county standards. George stated liability is an issue that is raised a lot, but there have not been a lot of cases in this regard. He stated the county wants to make sure the maintenance is reasonably done and any trial in Montana reviews the driver's negligence. In regard to insurance, MACo covers Ravalli County in this regard.

Commissioner Thompson stated this has been a learning process for him. He wrote a letter to a citizen stating it is not a county road. The issue evolved between two separate parties and the County should not have been involved in this. Commissioner Thompson stated the county has made some mistakes. A settlement conference has taken place, but the issue has not been resolved at this time. Judge Langton took quite a bit of time and Commissioner Thompson wished he had been quicker in his decision. Commissioner Thompson stated there are citizens on this road who vilified him in the newspaper, while other citizens got caught in the middle. In the past this road has been operated as a county road. Commissioner Thompson stated he feels it is time the county go back and maintain the road in the same manner (to that level) that it has been done in the past. David has proposed to add the segment below the trail, resuming maintenance consistent with the Ravalli County Road Program. Other users should continue to participate in the dust abatement program. Commissioner Thompson felt the dust abatement program will help this road, and hopes the citizens will participate.

Commissioner Lund read a portion of the court case, stating the County has a right-of-way and it is not a county road, and the Board of County Commissioners can choose to maintain the road, but it does not alter the fact that it is not a county road. Commissioner Lund stated she does not concur with David's entire letter, but hopes the citizens will participate in the dust abatement program. She felt the road would hold up better with applications of dust abatement material.

Dee Morris of Bear Face Road asked if Bear Creek Road was a county road. He was told in the past that it was a county road and it was going to be paved the following year. He stated he built a \$400,000 house and has a road that is far from drivable.

Don Chapman of 1111 Bear Creek Road asked the Board of County Commissioners about the dust abatement, stating he has done this for the past five years on his own. If they ask to participate, will he be charged twice as much as what it cost him to purchase the dust abatement? Commissioner Lund stated he would have access to this program. David stated the proposal allows the abatement to be applied to county-operated roads and privately operated roads. This will allow everyone to participate in the program. The prices will be slightly different. The County will notify the citizens of the cost and date and times to sign up for this program.

Sheila Pallard stated the bus turn-around was in her front yard for 25 years. They put in culverts and gave up a portion of their yard for this turn-around. The kids were in her front room when it was cold in the morning. They made this a county road up to the bus turn-around. David stated it would be hard for him to respond to this because the judge has already made his ruling.

Roland Turney stated he is probably not well liked at this minute, as he started the litigation. He asked what prevents the Board of County Commissioners from adopting this as a county road. George stated the County has the right to adopt the road, but it would need to be brought up to County specifications. They have the authority, but it will cost quite a bit of money to make this a county road. It is at their discretion. The position of the Commissioners since 1991 has been that the road would need to be brought up to county standards prior to adopting it as a county road. The budget has not grown proportionately in order to take in the roads. Roland asked, "If the judge had ruled this as a county road, would the Commissioners have to take the road in?" George stated that, too, is the Board of County Commissioners' discretion, as they do not have to maintain a county road if they choose not to. The Board of County Commissioners has the discretion on how to spend their road budget.

Jane Johan stated that as of late, the road department does not maintain all the roads, anyway. So what does it matter if it is a county road or not? She stated not all trail heads are the same and this road has quite a bit of traffic.

Jack Johan questioned if the Board of County Commissioners intend to maintain the road from Red Crow to Bear Face Road. Commissioner Thompson stated it is his opinion that it be maintained, but the other two Commissioners need to make their own decision.

Commissioner Chilcott stated the Board of County Commissioners can commit to the maintenance, but any new Board of County Commissioners could change their minds on the maintenance.

Bill Harland asked, "How many taxpayers would need to live there before you would decide to make it a county road and maintain it? There is quite a bit of growth". Commissioner Chilcott stated he could not give a hard figure. Commissioner Thompson said it depends if the road is a major road or a collector road, and what the road count is.

Bill stated the Forest Service told him it was a forest service road and they turned it over to the County. He stated there is confusion on the ownership. Commissioner Chilcott stated they should review the entire County and see where the need is in the valley.

Jack stated he participated in the dust abatement program, but the County needs to do a better job of getting the word out. David stated they sent letters to the residents on these types of roads. It was also in the newspaper.

Shannon Miller lives at the end of the road. They purchased Robin Hurst's cabin. She indicated they talked about a private association, but it does not seem fair, since 50% of the traffic goes to the trailhead. "I live on the section of road that no one wants. What happens between Bear Face and the trailhead?" Will the Forest Service help her with the dust abatement; is it her responsibility to maintain that section of the road; should she remove the trees when they fall over the road?

Bob Kooby of Bear Creek Road stated he has had consternation with the Road Department. When he made his final stand, they finally showed up. That is deplorable. As soon as the neighbors set this meeting up, the road department delivered a few loads of sand. He stated when they talk, they finally take action. Bob stated they should not have to deal with the dust in the summer and he had an inch of dust in his house in the summer. He stated he would like to cooperate in this dust abatement policy. It is a shame the citizens have to go through such drastic measures to get things done.

David stated it was not 'magic' the road graders showed up; it was on the schedule.

Ken Hudson appreciates what has been done. He stated he does not appreciate the lawsuit from the people who do not even live in the area. He stated it is hard for him to understand the funding issue in the County. He asked what should be done about this money crisis.

Commissioner Thompson stated he was in Washington, D.C. for six days to deal with PILT monies and secure rural schools for the 25% fund. He stated when there was resource extraction done in the forests, the county did not have these problems. The President is attempting to cut the Rural Secure Schools Act (25% fund) over a five-year period, so where will we get another \$200,000 to fund the roads and education? If the county goes back to the original 25%, we will only receive \$89,000.00.

Kent Miller of Bitterroot National Forest stated Judge Langton's ruling still leaves the question of jurisdiction unanswered. Their position is that it is the jurisdiction of the County. In 1979 they conveyed the easement to the County and, as such, they began the historical maintenance. He stated he is glad to see the Board of County Commissioners leaning toward maintaining the road, as they have in the past.

Sally Barney lives on Bear Creek Trail and stated they need to distinguish between Bear Creek Road and Bear Creek Trail. A portion of the road is paved. She asked if they are going to maintain the upper part that has been in dispute or the whole trail. David said Bear Creek Trail from Red Crow to Bear Face Road would be maintained.

Bob stated they offered to use their own equipment to maintain the road, but we were told by the Road Department they would send the Sheriff. Is that an alternative? James stated any member of the public could do anything on the easement as long as it does not constitute a nuisance, and if they did something to cause a problem, it is their liability. James also advised the group if they want to do something, they need to cooperate with the Road Department. There are two parts: one is a County road; the other is a right-of-way. If it is on the right-of-way they can do something; but they would need to coordinate it.

George stated that on West Fork and East Fork there have been agreements with private landowners to do something on these roads. But that has been in the past and that is the Board of County Commissioners' discretion. Commissioner Chilcott asked why the county would want to incur the expense of maintenance. Bob said because that never happens and it is not up to a good standard.

Kent stated the Forest Service also acquired an easement up to the forest boundary. The easement was granted for the whole stretch, but was not historically maintained.

T.C. Pittard said they had to make so many complaints and asked if they had to continue that phone campaign? This is hazardous and due to ice and potholes they need maintenance now.

Lynn Vane stated the new 'stuff' they put on the road is slippery and horrible. She stated she appreciates the times the Road Department has come out. David stated none of the gravel roads have been constructed or designed to specific standards. They have evolved. They are minor local access roads. The County has now adopted a management program and we will work within those parameters. Bear Creek will never meet that standard and we have provided the dust abatement program. David advised the residents 'their life will be much easier if they participate'. He stated the county has major collector roads that need attention and this is not a major collector road.

Jack stated he and his neighbor went 50/50 in the dust abatement policy. He understands they maintain for dust abatement and the County is responsible to smooth the road. He stated they called the road department so the potholes could be taken care of and they told us we were subject to arrest if we filled the potholes. He asked if they participate, is it the County's responsibility to fill in the holes? David stated if there is a failure in the application, they will work with the contractor, but if the logging trucks make the holes, it is not the county's responsibility.

Wes Mills is Jack's neighbor. He called the Road Department and was told he could not do anything to the road and Lyman Contractor was also told the same thing. David stated they contract with a contractor, but they did not utilize the approved material of dust abatement. Wes asked, 'can you give us a list of those vendors that apply?' David stated where the roads have a great deal of traffic, they worked with Representative Ray Hawk to get legislation on making those trucks responsible to fix those holes, but it failed. David also noted that Lyman could apply for this contract. Anyone can apply for the dust abatement program, no matter where they live on the road.

Commissioner Thompson made a motion to have the County resume maintenance on Bear Creek Trail below Bear Face to Red Crow on the standard of the County gravel road program as we have in the past. Encourage residents to be part of the dust abatement program. Commissioner Lund seconded the motion. Commissioner Lund called for discussion stating there is concern over Bear Face and the Forest Service boundary. All voted "aye".

In other matters, James gave an update on other litigation issues. Mr. Burgess has agreed to the terms of the order. The next phase is discovery and they have a good idea of the issues because they were present. Commissioner Thompson stated this is now on the market. James said the violation does not go away so the new owner would need to be aware of this. The information has to be disclosed to the buyer. James will need to hire a surveyor, and will ask for Mr. Burgess' business records as it is all related to the discovery.

Skalkaho Lodge has been fully briefed for summary and is in front of Judge Langton.

Ratcheson vs. Ravalli County: flood plain has been stipulated and they are working on another flood plain application, so this is on hold. Hopefully, the litigation will be dismissed. Laura stated she has reviewed this new application and it looks sufficient.

The Dan Floyd flood plain litigation continues even though an engineer has been hired. There are major issues in this case.

In other matters, Internal Auditor Klarryse Murphy explained how the road improvement fund could be set up and according to MCA, with formal adoption of five grading districts each having their own separate capital improvement funds. James recommended adoption of this. Commissioner Thompson indicated at a following meeting they will be talking about pro rata shares of the grader districts. James said this should have been established long ago in order to hold the money. Commissioner Lund made a motion to adopt Resolution No. 1805, as recommended by the auditor. Commissioner Thompson seconded the motion and all voted "aye".

The Board met with Members of the Planning Board. Dan Huls, Lori Schallenberger, Karen Hughes and Civil Counsel James McCubbin were present.

Commissioner Chilcott read the letter of resignation from Patrick O'Herren.

Chairman Dan Huls indicated they were here to discuss the pro rata fee. The Planning Board committee on the pro rata fee issue prepared a study of what other counties have done. Dan stated grader districts are large and case law points to the fact that exactions must benefit the subdivisions in question. He stated the committee's concern is that Wilcox and Meridian are in the same grader district and the pro rata fee that was collected from Wilcox could be spent on Meridian, so there is no nexus for the extraction fee.

James stated proportionality case law is out there. He is familiar with the cases and feels the County is solid in the current pro rata in terms of proportionality. He agreed they need to review the nexus, but our formula is solid. James agreed the major challenge is to meet the nexus requirements, while still being practical in our management practices. We need to



establish the pro rata districts, and it needs to be rationally related to the particular subdivision.

Commissioner Thompson stated the initial decision on the grader districts was the proper decision. The county had one person who asked for his money back because it had not been utilized in the 7 years. Since that time there has been growth, therefore some changes need to be made. He also noted they have a difference in the amount of money they are receiving.

Discussion occurred in regard to the geographic areas and accountability of the money (keeping track of the money). Commissioner Lund relayed they just created a resolution addressing this. James said he finds it disturbing that the resolution was created today. David stated they established the accounts one year ago, prior to that it was rolled into the operating budget. James stated the county needs to track the funds in case of a court challenge. David stated some have a balance of a couple thousand and some have \$200,000.00 with a \$500,000.00 cap. Those are not for routine operations; they are for capital improvement. The county is in the process of a 7-year operating pavement plan, and they will identify several roads for approval by the Commissioners for paving. These will be for major collector roads, not access roads. They should establish assessment areas for the corridors, such as Golf Course Road. This helps to identify and tract and have a nexus to the subdivision. The problem is that some of the subdivisions are on orchard track roads, and the change will occur in the next twenty years.

James stated impact fees must be for capital improvement. David said they should identify the assessment zones. Commissioner Chilcott said it is routine maintenance to compensate for the use of the roads, so there is a nexus. David stated it seems that it would not be difficult to identify the physical improvements when the seven-year plan is approved. James stated the money should not be limited to capital improvement. The problem using it for equipment is that it has to be justified. Commissioner Chilcott said it should be used for increased capacity and road improvement. Dan stated one of their concerns is some roads will never be brought up to standards, but if there is a safety issue, a partial improvement is necessary for mitigation. James stated the tool to address this is the condition of approval, not the pro rata share. David stated the pro rata should not identify safety issues. If there is an identified issue, it is noted in their report and mitigation is necessary.

Planning Board Member Ben Hellicoss stated on some subdivisions the pro rata should be used for the assessment area, due to the students that will go to different schools. David stated the roads impact all the way to Missoula or Lost Trail. James stated he has arguments to defend, but if we have an egregious case it will be more difficult to defend. He stated the districts are large enough to see an issue. However, the idea of using it in multiple districts is interesting. If the county has problems spending money in the districts, they need to review that.

James stated seven-years are a good time frame as the industry operates on 7-year plans; Capital Improvement Funds are generally on 7-year time frames. James suggested they review the roads that drain into a major collector. Ben stated the districts are geographic but the roads must be in that 'drainage area', not necessarily in that district.



Planning Board Member Lori Schallenberger stated the nexus has to affect the subdivision, so how do the large districts benefit the subdivision? And the accountability is important.

Commissioner Thompson said as elected officials, when they receive a certain amount of dollars, they can utilize the money in the area, but they need to make sure things are done to benefit those people in a given area. James said some of the money could be used for maintenance or dust abatement.

Planning Board Member Les Rutledge asked about using the money to benefit the community or the neighbors to the subdivision. James said that is why drawing the lines on the district are important.

Dan said if the assessment is made on road 'A' and they spend dollars in the district on road 'B, C or D'; how do they factor that as fairness in the exaction issue?

Some discussion of final plat time line and road improvements occurred. It was noted the developer has up to 2 years to file the final plat and how that calculation can be made at that time. James said calculating it twice is no problem, but we cannot make the developer pay for the calculation two times. Commissioner Chilcott suggested having them sign a disclaimer for the calculations, so the developer looks at this. Karen said have the developer sign this, not the consultant.

Laura stated the people need those facts up front for a fee of \$175.00, so it should be mandatory.

David stated he could review the assessment district and share that draft with Karen. Karen stated it is important for Planning Staff to have these figures; as they explain it each and every time. These are also preliminary figures. Karen also relayed they always advise the applicants to subdivisions that it is a good idea to do a waiver, but they always explain the whole pro rata share. They also tell the applicants to visit the road department, but they rarely do. James stated we could put a one-page declaration form to the application without any amendment to the regulations.

Commissioner Chilcott asked David about the citizen who hired an engineer and was charged \$2,000.00, when WGM charged \$3,000 to review it. David stated maybe the plan was not thorough and it took longer; thus, the higher review fees.

Lori stated she, too, has heard about this. Commissioner Chilcott said this was a Request for Bid, not a monopoly.